

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29019

This is a summary of a settlement agreement entered into following the October 2014 hearings of the Disciplinary and Ethics Commission (“Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred after January 1, 2009. The rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s *Rules of Conduct*.

I. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* (“*Standards*”) when he inaccurately disclosed his compensation structure as “fee-only” on CFP Board’s “Find a CFP® Professional” search function.

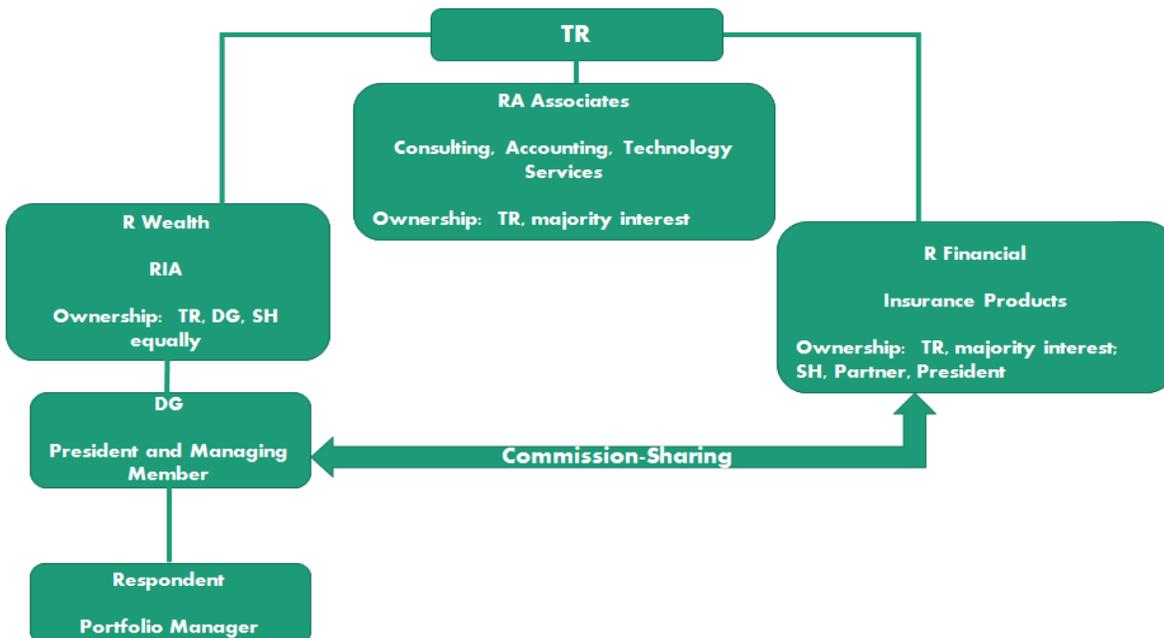
II. Findings of Fact

In March 2014, CFP Board learned that Respondent allegedly misrepresented his compensation structure on CFP Board’s “Find a CFP® Professional” search function. Respondent indicated on his “Find a CFP® Professional” search profile that his compensation structure was “fee-only.” Under the definition of “fee-only” in the Terminology Section of the *Standards*, a CFP® professional may describe “his or her practice as ‘fee-only’ if, and only if, all of the [CFP® professional]’s compensation from all of his or her client work comes exclusively from the clients in the form of fixed, flat, hourly, percentage or performance-based fees.” “Compensation” is defined as “any non-trivial economic benefit” that a “[CFP® professional] or related-party receives or is entitled to receive for providing professional activities (emphasis added).”

In March 2014, CFP Board conducted a background check on Respondent. The background check confirmed the following:

1. Respondent’s “Find a CFP® Professional” search profile on CFP Board’s web site listed his compensation method as “fee-only”;
2. In September 2013, CFP Board removed Respondent’s “fee-only” selection from his “Find a CFP® Professional” search profile. In September 2013, CFP Board emailed to Respondent its Notice to CFP® professionals (“Notice”) regarding the definition of “fee-only.” That same day, Respondent re-entered “fee-only” on his “Find a CFP® Professional” search profile;

3. Respondent's firm was structured as follows:



4. Respondent's firm, R Wealth, on its Form ADV Part 2A Disclosure Brochure indicated under Item 10 within the section captioned "Affiliated Companies and Principal's Other Business Activities":

TR is a principal for RA Associates, which provides professional consulting, accounting, and technology services, and R Financial, which provides insurance products. The majority of R Wealth's clients will be acquired through referrals from RA Associates. R Wealth may also refer clients to the other related firms. There is no fee-paying arrangement in existence for the referral of clients between related entities. However, each related entity has an economic incentive to refer clients among the accounting, insurance and advisory firms because the three firms are related entities (i.e. under common ownership). TR divides his time among the business activities related to the three related entities... (emphasis added);

5. R Wealth's Form ADV Part 2A Disclosure Brochure also indicated under the section captioned "Information Required by Part 2B of Form ADV: Brochure Supplement, Item 4 Other Business Activities":

DG is independently licensed as an insurance agent. Although licensed, DG's practice does not actively involve selling insurance products to clients. Instead, DG will refer clients in need of insurance products to R Financial. DG has an arrangement with R Financial to receive a portion of the commissions earned from insurance products sold to his clients through R Financial...

6. Respondent's BrokerCheck Report indicated that he was not registered with a broker dealer.

In March 2014, CFP Board sent a Notice of Investigation ("NOI") to Respondent that asked Respondent to list all the ways he is compensated and to explain the relationship between R Financial and R Wealth. In March 2014,

Respondent explained that he received an annual salary plus a bonus at the discretion of his employer, paid by R Wealth. He added that he did not maintain an insurance license in any state. Respondent also confirmed that he was not employed by, nor received any compensation from, R Financial, and therefore had no information regarding how that business was structured or how they received compensation. Respondent noted that R Financial and R Wealth shared the common founding principals of TR and SH, but the businesses were completely separate in regards to their employees and compensation structures. Respondent added that since he was only paid a flat salary plus bonus based on his work with R Wealth, he believed he fit the definition of “fee-only.”

In March 2014, CFP Board sent Respondent a request for additional information and documentation. Respondent responded in April 2014. Respondent timely responded to all of CFP Board’s subsequent requests for information and documentation.

In his April 2014 statement to CFP Board, Respondent stated that his duties as a portfolio manager for R Wealth were to support all trading and research activities of the senior portfolio manager, provide monthly reports to R Wealth’s clients, attend quarterly board meetings as needed, and attend to various account maintenance functions. He stated that his bonus was determined solely at the discretion of his employer and he had no idea year to year if he would receive a bonus. Respondent did not know whether his bonus was based on a combination of his performance and the performance of R Wealth. However, he assumed that to the extent that R Wealth was profitable and financially able to pay him additional compensation that would play a role in determining if he would be paid a bonus each year.

Respondent explained that he did not refer clients to DG to purchase insurance. He also stated that he had not referred any clients, nor had any plans to refer any clients to DG or R Financial to purchase insurance.

Respondent further indicated that he was not familiar with anything related to R. Financial. DG subsequently confirmed that there were clients for whom Respondent performed professional services at R Wealth that also received professional services and/or products from R Financial. DG stated that Respondent directly or indirectly provided some level of support to all the R Wealth clients. Some of R Wealth clients were also R Financial clients. DG added that TR would frequently introduce his contacts to both R Financial and R Wealth independently. Some of R Wealth’s clients have purchased insurance from R Financial. DG added that Respondent was not involved in any way in those sales.

III. Rule Violations

- A. *Rule 2.1 – A certificant shall not communicate, directly or indirectly, to clients or prospective clients any false or misleading information directly or indirectly related to the certificant’s professional qualifications or services. A certificant shall not mislead any parties about the potential benefits of the certificant’s service. A certificant shall not fail to disclose or otherwise omit facts where disclosure is necessary to avoid misleading clients.*

Respondent communicated misleading information related to his professional services when he inaccurately disclosed his compensation structure as “fee-only” on CFP Board’s web site due to the following: 1) R Wealth and R Financial are related parties due to the common ownership of TR; and 2) related party R Financial has a commission-sharing arrangement with DG, President and Managing Member of R Wealth. CFP Board’s definition of “compensation” precludes Respondent from referring to his compensation structure as “fee-only” because related parties receive commissions for selling insurance. Thus, Respondent violated *Rules of Conduct* Rule 2.1.

B. *Rule 2.2(a) – A certificant shall disclose to a prospective client or client an accurate and understandable description of compensation arrangements being offered.*

Respondent failed to disclose an accurate and understandable description of compensation arrangements being offered when he inaccurately disclosed his compensation structure as “fee-only” on CFP Board’s web site due to the following: 1) R Wealth and R Financial are related entities due to the common ownership of TR; and 2) related party R Financial has a commission-sharing arrangement with DG, President and Managing Member of R. Wealth. CFP Board’s definition of “compensation” precludes Respondent from referring to his compensation structure as “fee-only” because related parties receive commissions for selling insurance. Thus, Respondent violated *Rules of Conduct* Rule 2.2(a).

C. *Rule 6.5 – A certificant shall not engage in conduct which reflects adversely on integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.*

Respondent engaged in conduct that reflects adversely on his integrity and fitness as a certificant, upon the CFP® marks, and upon the profession when he inaccurately disclosed his compensation structure as “fee-only” on CFP Board’s web site due to the following: 1) R Wealth and R Financial are related entities due to the common ownership of TR; and 2) related party R Financial has a commission-sharing arrangement with DG, President and Managing Member of R. Wealth. CFP Board’s definition of “compensation” precludes Respondent from referring to his compensation structure as “fee-only” because related parties receive commissions for selling insurance. Thus, Respondent violated *Rules of Conduct* Rule 6.5.

IV. Discipline Imposed

Article 3(a) of CFP Board’s *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”) provides grounds for discipline for any act or omission that violates the *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 2.1, 2.2(a) and 6.5 of the *Rules of Conduct*. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact and Rule Violations. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a Private Censure, pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered in mitigation the following factors:

1. Respondent was contrite;
2. The record indicated that Respondent works in a non-client facing position; and
3. Respondent was cooperative and corrected his compensation disclosure when the issue came to his attention.

The Commission considered as an aggravating factor that Respondent also used “fee-only” on his firm website.

In arriving at its decision, the Commission consulted *Anonymous Case History* 28295 as well as *Sanction Guideline* 20(d) (Misrepresentation to clients).